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MESTI UNGGUL SDN BHD v. HJ MD RADZI ISMAIL

HIGH COURT MALAYA, TAIPING
AHMAD NASFY YASIN JC
[ORIGINATING SUMMONS NO: 24NCVC-31-1-14]
25 JULY 2014

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LAND LAW: *Caveat – Removal of – Application for – Land originally registered under name of Pesuruhjaya Persekutuan Pengakap Malaysia Daerah Larut Matang dan Selama – Whether plaintiff a subsequent bona fide purchaser for value – Whether registration of plaintiff as registered owner of land obtained through fraud and/or forgery – Scouts Association – Whether a corporation that can sue and be sued – Whether Form 19B and statutory declaration bore seal of corporation – Whether defendant authorised to act on behalf of corporation – Whether defendant had legal capacity to execute Form 19B and statutory declaration – Whether plaintiff acquired indefeasible title – Whether defendant had caveatable interest – Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng & Anor – Scouts Association of Malaysia (Incorporation) Act 1968, ss. 3(3) & 7(2)*

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LAND LAW: *Indefeasibility of title and interests – Fraud – Transfer of land – Forged signature in Form 14A – Whether proved – Whether plaintiff a subsequent bona fide purchaser for value – Whether plaintiff registered owner of land by virtue of third transfer – Whether plaintiff acquired indefeasible title – Kamarulzaman Omar & Ors v. Yakub Husin & Ors*

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The plaintiff filed an application for the removal of the caveat lodged by the defendant over a piece of land ('the land'). The facts revealed that, initially, the land was registered under the name of 'Pesuruhjaya Persekutuan Pengakap Malaysia Daerah Larut Matang dan Selama' ('PPPM'). The search report showed that the land was transferred from PPPM to a company known as Ikatan Asas Sdn Bhd (the first transfer). The said land was subsequently transferred to ABI Teamworks Sdn Bhd (the second transfer). Thereafter, a third transfer took place where the land was transferred to Mesti Unggul Sdn Bhd, *ie*, the plaintiff. The defendant, being the Larut Matang & Selama District's Scouts Commissioner, lodged a caveat over the land. Upon being served with the application for the removal of the caveat, the defendant alleged, *inter alia*, that (i) he had a caveatable right/interest over the land; and (ii) the registration of the plaintiff as the purported registered owner of the land was obtained through fraud and/or forgery since the defendant did not transfer the land owned by the scouts to any party whatsoever. The issues that arose for consideration were: (a) in what capacity did the defendant lodge the caveat; (b) whether the caveator was bound by the contents of Form 19B of the National Land Code ('NLC') to state his interest over the land; (c) whether the defendant's allegation of forgery of his signature in Form 14A of the NLC was a mere afterthought; and (d) whether the defendant had a caveatable interest when the third transferee came into possession of the land.

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Held (allowing plaintiff's application with costs):

(1) The Scouts Association is a juristic person having its own identity. The defendant's assertion that his appointment was made pursuant to an Act of Parliament was unsupported with any documentary evidence that he was personally appointed to this post. This was a bare assertion by the defendant. Further, pursuant to s. 3(3) of the Scouts Association of Malaysia (Incorporation) Act 1968 ('the Act'), the corporation may sue and be sued in all courts and in all manner of actions and suits and may do all other matters and things incidental or appertaining to a body corporate. The power to sue and be sued is vested in the corporation. The Scouts Association has a common seal and it can be affixed to any instrument or document and to be authenticated by the person(s) mentioned in s. 7(2) of the Act. (paras 9-11)

(2) The Form 19B and the statutory declaration did not bear the seal of the corporation and the statutory declaration was not prepared, drafted and filed pursuant to a resolution of the Council. Further, the Form 19B and the statutory declaration were not executed by a person authorised by the Council. There was no evidence to show that the defendant had any connection with the Association let alone that the defendant was authorised to act for the Association. Therefore, the defendant could not arrogate to himself the power of the Association in seeking to protect the interest of the Association. (paras 12 & 13)

(3) The grounds stated in the Form 19B and the statutory declaration were vague and did not disclose any caveatable interest. The facts and evidence adduced by the defendant established that the defendant had not even cleared the threshold to show that he had the legal capacity to execute the Form 19B and the statutory declaration (*Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng & Anor*; refd). (paras 16 & 18)

(4) The plaintiff was a subsequent *bona fide* purchaser. The search result showed that the plaintiff was the recipient of the land by virtue of the third transfer. *Vide* the said transfer, the plaintiff acquired an indefeasible title to the land as the plaintiff was a *bona fide* purchaser for value. In any event, no evidence was adduced to establish that *prima facie* there was a serious question meriting a trial since the defendant merely questioned the correctness of the search report without further evidence to establish the defendant's claim of the plaintiff's title being defective. In the circumstances, the defendant had no right to caveat the land which had rightfully passed to the plaintiff (*Kamarulzaman Omar & Ors v. Yakub Husin & Ors*; refd). (paras 19, 20 & 22)

(5) The defendant's signatures on the Form 14A of the NLC and at the jurat of his affidavit were the same. The defendant did not file any application to forward the relevant documents for handwriting analysis at the chemistry department. Thus, the alleged forgery was merely an afterthought and unsustainable. (para 21)

A **Case(s) referred to:**
Kamarulzaman Omar & Ors v. Yakub Husin & Ors [2014] 1 CLJ 987 FC ***(refd)***
Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng & Anor [1995] 3 CLJ 520 CA ***(refd)***
Wong Kuan Tan v. Gambut Development Sdn Bhd [1984] 2 CLJ 26; [1984] 1 CLJ (Rep) 441 FC ***(refd)***
B *Wu Shu Chen & Anor v. Raja Zainal Abidin Raja Hussin [1997] 3 CLJ 854 CA* ***(refd)***

Legislation referred to:
National Land Code, s. 323
Scouts Association of Malaysia (Incorporation) Act 1968, ss. 3(3), 7(2)

C *For the plaintiff - Subramaniyan; M/s Subramaniyan*
For the defendant - Joshua Ding; M/s Joshua Ding & Partners

Reported by Kumitha Abd Majid

JUDGMENT

D **Ahmad Nasfy Yasin JC:**

Introduction

[1] This is an application by the plaintiff for the removal of the caveat lodged by the defendant on a piece of land held under Geran GM 260, E Lot 3365, Mukim Tupai, Daerah Larut & Matang ("the said land").

[2] The relevant cause papers filed by the parties are as follows:

(a) The originating summons and the affidavit in support affirmed by Mohd Jeffri bin Pawan Teh on 27 January 2014 ("the affidavit in F support");

(b) The affidavit in response affirmed by Md Radzi bin Ismail on 28 February 2014 ("defendant's affidavit 1");

(c) The affidavit-in-reply affirmed by Mohd Jeffri bin Pawan Teh on 17 March 2014 (the plaintiff's affidavit in reply-1");
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(d) The affidavit in response affirmed by Md Radzi bin Ismail on 28 March 2014 ("the defendant's affidavit-2");

(e) The affidavit in reply affirmed by Mohd Jeffri bin Pawan Teh on 7 April 2014 ("the plaintiff's affidavit in reply-2").

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Factual Background

[3] In order to understand how this application came about it is instructive to set out in brief the parties to this action *vis-a-vis* the said land. The starting point of the discussion would be the registered owner of the I said land. We may begin by stating that the said land was registered under the name of Pesuruhjaya Persekutuan Pengakap Malaysia Daerah Larut

Matang dan Selama. The search report exhibited as exh. MJ-1 attached to the affidavit in support shows that the land was transferred from Pesuruhjaya Persekutuan Pengakap Malaysia Daerah Larut Matang dan Selama to a company known as Ikatan Asas Sdn Bhd (the first transfer). The said land was subsequently transferred from Ikatan Asas Sdn Bhd to A.B.1 Teamworks Sdn Bhd (the second transfer). A third transfer took place from A.B.I Teamworks Sdn Bhd to Mesti Unggul Sdn Bhd (the third transfer). Thus all in all three separate dealings (transfers) took place within a short span of time.

[4] The plaintiff, as seen from the above, is the current registered proprietor of the said land. The defendant's connection to the said land and the plaintiff came to be established when on 1 October 2013, the defendant lodged a caveat over the said land (see form 19B exh. MJ-2 in the affidavit in support). I will allude to the reasons for his lodgement of the caveat at the later part of this judgment.

[5] Naturally the defendant, upon being served with the application for the removal of the caveat, opposed the application which is grounded on the following:

(i) The defendant has a caveatable right/interest in the land as the defendant is claiming ownership (see the original title in exh. MR-5) in the defendant's affidavit in reply (2));

(ii) The caveator's claim based on the affidavit filed, discloses a serious question meriting a trial ie, the registration of plaintiff as the purported registered owner of the land was through fraud and/or forgery and/or misrepresentation and/or void or insufficient instruments, as the defendant being the Larut Matang & Selama District's Scouts Commissioner has not transferred the said land owned by the Scouts to any party whatsoever (see exhs. MR-1 & MR-2 & MR-3 – three sets of transfer forms (Form 14A NLC and exh. MR-4 a police report);

(iii) On the balance of convenience/justice the private caveat should be maintained to prevent further dealings of the said land.

Issues

[6] The following issues were framed by the parties to be determined by this court:

(i) In what capacity the defendant lodged the caveat;

(ii) Whether caveator is bound by the contents of Form 19B to state his interest in the said land;

(iii) Whether the defendant's allegation of forgery of his signature in Form 14A is a mere afterthought;

(iv) Whether the defendant has caveatable interest when third transferee had come into possession of the said land.

A **Decision Of Court**

[7] It is trite law that in deciding whether a private caveat should remain on the register document of title or be removed, the caveator has first to satisfy the court of a three tier test - see the Court of Appeal's decision in the case of *Luggage Distributors (M) Sdn Bhd v. Tan Hor Teng & Anor* [1995] B 3 CLJ 520; [1995] 1 MLJ 719, which in turn had examined cases decided earlier. Gopal Sri Ram JCA there, speaking for the court, alluded to the following stages that a caveator must establish before a caveat is allowed to remain on the register. The first step is to examine whether the grounds expressed in the application for the lodgement of the caveat sufficient in C law to support a caveat. This to my mind means that the caveator must establish by referring to the Form 19B that the statements disclosed therein showed that the caveator has a caveatable interest in the land in question. If the Form 19B itself cannot allude as to how the caveator claims caveatable interest the matter ends there. In the second step the caveator must establish D evidence, invariably by way of affidavit his claim discloses "a serious question meriting a trial". Lastly if the first two questions are resolved in the respondent's favour, then, whether the balance of convenience, or more appropriately, the balance of justice, lies in favour of the caveat remaining on the register pending the disposal of the suit.

E **[8]** As stated earlier, the capacity of the defendant in entering the caveat takes center stage. The plaintiff had questioned the various appointments of the defendant at paras. 9 and 19 in the plaintiff's affidavit in reply-1; whereby the defendant, a caveator has alluded to himself having three (3) different designations, namely:

F (a) Pesuruhjaya Persekutuan Pengakap Malaysia;

(b) Pesuruhjaya Pengakap Daerah Larut Matang & Selama;

(c) Pesuruhjaya Persekutuan Pengakap Malaysia Daerah Larut Matang & Selama

G **[9]** The defendant in para. 8 of the defendant's affidavit – two claimed that his appointment was made pursuant to an Act of Parliament. Unfortunately this assertion was unsupported with any documentary evidence that he was personally appointed to this post by an Act of Parliament. In short what we have is only a bare assertion by the defendant.

H **[10]** At this juncture it is pertinent to note that pursuant to s. 3(3) of the Scouts Association of Malaysia (Incorporation) Act 1968 (Act 409) it is clearly stated that "the corporation may sue and be sued in all courts and in all manner of actions and suits and may do all other matters and things incidental or appertaining to a body corporate". It is also important to I observe that the power "to sue and be sued" is vested in the corporation. Section 7(2) of Act 409 further provides that any documents that require "the seal of the corporation shall be sealed with the seal of the corporation

pursuant to a resolution of the council to the effect in the presence of the persons for the time being discharging the duties of the National Chief Commissioner or an Assistant National Chief Commissioner and other person authorised by the Council who shall sign every such deed, document or other instruments to which such seal is affixed and such signing shall be sufficient evidence that such seal was duly and properly affixed and that the same was the lawful seal of the corporation".

[11] The relevant provisions that I had referred are significant and established the following:

(i) That the Scout's Association is a juristic person having its own identity;

(ii) Thus the association has a power to sue and be sued;

(iii) The association has a common seal; and

(iv) The common seal of the association can be affixed to any instrument or document and to be authenticated by the person(s) mention in s. 7(2) of the Act.

[12] Arising from the above the immediate question that comes to mind is why did the defendant lodged the caveat when at all times the association has the capacity to do so in its own name? A scrutiny of the application for the lodgement of the caveat, Form 19B, showed no answer to this critical question. As stated earlier the connection between the defendant was never established and more importantly Form 19B and the statutory declaration do not bear the seal of the corporation and the statutory declaration have not been prepared, drafted and filed pursuant to a resolution of the Council. What is clear for the Form 19B and the statutory declaration is that they are not executed by a person authorised by the Council. There is no evidence to show that the defendant has any connection with the association let alone that the defendant is authorised to act for the association.

[13] It is clear therefore that the defendant cannot arrogate to himself the power of the association in seeking to protect the interest of association. The defendant during arguments impliedly stated that the avowed intention was to protect the interest of the association. If at all such is the good intention the defendant must seek to carry out the good intention in accordance with a proper procedure. Alas, in the present case the conduct of the defendant fits the saying "lebih sudu dari bubur"!

[14] Section 323 of the National Land Code 1965 states as follows:

(1) The persons and bodies at whose instance a private caveat may be entered are:

(a) Any person or body claiming title to or any registrable interest, any alienated and or undivided share in any alienate (and) or any right to such title or interest:

(b) ...

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(c) ...

2) Any such person or body wishing to apply for the entry of such a caveat shall do so in Form 198 and such application shall be attested in accordance with the provisions of section 211 and shall state therein the nature of the claim on which his application is based, and whether the caveat is to be expressed to bind the land itself (or undivided share in the land) or a particular interest only).

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[15] Having examined Form 19B lodged by the defendant, I found that he merely states as follows:

untuk mengelak dari pindah milik seterus setelah berlaku penipuan jual beli tanah Geran Mukim 260 Lot 3365 Mukim Tupai.

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And the statutory declaration merely states:

Memasukkan kaveat ini untuk mengelak dari pindah milik seterusnya setelah berlaku penipuan jual beli Tanah geran Mukim 260 Lot 3365 Mukim Tupai.

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[16] It is my considered view that the grounds stated in Form 19B and the statutory declaration are vague and do not disclose any caveatable interest. In the case of *Luggage Distributors (M) Sdn Bhd v. Ta Hor Teng & Anor* [1995] 3 CLJ 520 at p. 536; [1995] 1 MLJ 719 at p. 741 the Court of

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Appeal had referred to the judgment of Hashim Yeop A Sani (FJ) in the case of *Wong Kuan Tan v. Gambut Development Sdn Bhd* [1984] 2 CLJ 26; [1984] 1 CLJ (Rep) 441; [1984] 2 MLJ 113, where the following passage appears:

To put it more simply, the caveator in this case must first satisfy the court that he has a caveatable interest in the land. Only if he has such an interest can he qualify to lodge a caveat under s. 323 of the National Land Code. In the application to have the caveat removed the onus is cast upon the caveat or to satisfy the court on the evidence presented his claim to an interest in the land raises question to be tried and after having done so he must go on to show that on the balance of convenience the caveat should be extended until the disposal of the main action.

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[17] Further in the case *Wu Shu Chen & Anor v. Raja Zainal Abidin Raja Hussin* [1997] 3 CLJ 854; [1997] 2 MLJ 487 the Court of Appeal stated as follows at p. 871 (CLJ); p. 502 (MLJ):

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I now come to the second primary issue which is crucial to the appellant's case, ie, whether the two caveats should be removed. This necessarily calls for an enquiry into whether Goh as the managing partner of Minghsu Syndicate, under s. 323 of the Code had stated the nature of his claim forming the basis of his application in Form 19B under s. 323(2) which had to be verified by his statutory declaration under s. 323(3).

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The Court of Appeal after considering the evidence held at held at p. 871 (CLJ); p. 489 (MLJ) that:

> (3) Goh did not state the nature of his claim forming the basis of his application under s. 323(2) of the code. The appeal was therefore dismissed.

[18] It follows from what I have said above, in my view the facts and evidence adduced by the defendant established that the defendant had not even cleared the threshold to show that he has the legal capacity to execute Form 19B and the statutory declaration.

[19] It is pertinent to note that the plaintiff is a subsequent *bona fide* purchaser. The search result shows that the plaintiff is the recipient of the land by virtue of the third transfer. In this case the defendant had questioned the validity of the search report at para. 6 of the defendant's affidavit-1. But the plaintiff has stated in his reply at para. 10 of the plaintiff's affidavit in reply-1 that the search report reflects what is stated in the register of titles. Thus, I am of the view that by virtue of the third transfer, the plaintiff acquires an indefeasible title to the land as the plaintiff is a *bona fide* purchaser for value (see *Kamarulzaman Omar & Ors v. Yakub Husin & Ors* [2014] 1 CLJ 987).

[20] In any event there is no evidence adduced to establish that *prima facie* there is a serious question meriting a trial since the defendant merely questioned the correctness of the search report without further evidence tending to establish the defendant's claim of the plaintiff title being defective.

Issue IV

[21] This issue relates to Form 14A executed by the defendant and another individual by the name of Manshor b. Hashim. There were two signatures. The defendant alleges that only his signature on Form 14A (exh. MR-1) attached to the defendant's affidavit is a forgery. Having examined the defendant's signature on Form 14A and at the jurat of his affidavit, I am of the view that the signatures are the same. There are two signatures on Form 14A yet there is no affidavit or statutory declaration by Manshor b. Hashim that his signature had been forged. Further the defendant has not filed any application to forward the relevant documents for handwriting analysis at the Chemistry Department. Thus, to my mind, that the alleged forgery is merely afterthought and unsustainable.

Issue V

[22] This issue relates as to whether the defendant has a caveatable interest at this stage ie, when the third transferee has come into possession of the land. In the case of *Kamarulzaman Omar & Ors* (*supra*) it was held among others that it is late for the defendant to lodge a caveat over the

property since the plaintiff is not the immediate purchaser but a second subsequent purchaser. Therefore he is entitled to raise the shield of indefeasibility. In short, the defendant has no right to caveat the land which had rightfully passed to the plaintiff.

Conclusion

[23] Based on law and facts. I hereby ruled that the caveator had not disclosed his interest in the land, and his own designation is in doubt. He has alleged forgery of his signature as in Form 14A but has not alleged forgery of the co-signatory. Thus this raises the issue of the true intent or *bona fide* on the part of the defendant. In any event there is no evidence that could show that there is serious question meriting a trial. After taking all these facts into consideration I conclude that the caveator has no caveatable interest.

[24] Wherefore the plaintiff's application in enclosure 1 is allowed with costs.